

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAY 29 2007

COURT OF APPEALS
DIVISION TWO

RONALD HULL,

Petitioner Employee,

v.

THE INDUSTRIAL COMMISSION OF
ARIZONA,

Respondent,

ABLE REFRIGERATION, INC.,

Respondent Employer,

STATE COMPENSATION FUND OF
ARIZONA,

Respondent Insurer.

2 CA-IC 2007-0001

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

SPECIAL ACTION - INDUSTRIAL COMMISSION

ICA Claim No. 20050970489

Insurer No. 05-11402

Nancy J. Tyson, Administrative Law Judge

AWARD AFFIRMED

Rabinovitz & Associates, P.C.

By Bernard I. Rabinovitz

Tucson

Attorneys for Petitioner Employee

The Industrial Commission of Arizona
By Laura L. McGrory

Phoenix
Attorney for Respondent

State Compensation Fund
By James B. Stabler and Bill H. Enriquez

Tucson
Attorneys for Respondents
Employer and Insurer

E C K E R S T R O M, Presiding Judge.

¶1 In this statutory special action, petitioner employee Ronald Hull challenges the administrative law judge's (ALJ) decision finding, *inter alia*, that Hull's neck and right knee conditions were not related to his industrial injury. As a result, the award provided only temporary compensation based on Hull's restrictions due to his back and left knee conditions related to the injury and costs associated with evaluation of his neck condition. For the following reasons, we affirm the award.

¶2 Because the ALJ is the trier of fact, we defer to her factual findings and view them in the light most favorable to sustaining the award. *See Jaramillo v. Indus. Comm'n*, 203 Ariz. 594, ¶ 6, 58 P.3d 970, 972 (App. 2002). Hull is the owner and working supervisor of Able Refrigeration, Inc. His wife, Carol Hull, is the president of the company. On March 24, 2005, Hull's left leg "locked up" while he unloaded his work van. As a result, he twisted his knee and fell eighteen inches to the ground, landing on his back and arm.

¶3 Hull immediately felt pain in his lower back and experienced trouble walking. He testified that the following day he went to see the company doctor, Dr. Dennis Thrasher, and told Thrasher that he was suffering pain in his back, problems with his knees locking up, and numbness in his right arm and hand. He also felt a “twinge” in his neck, but thought that “it was just a strain.”

¶4 Carol Hull testified she heard her husband yell when he fell and found him lying on the ground. The day after the injury, she accompanied her husband to see Thrasher. She maintains that, although her husband had reported problems with his back, leg, arm, and neck to Thrasher, the doctor’s notes only reflected “half the things that w[ere] said” during the appointment.

¶5 Thrasher examined Hull on March 25, 2005, and began treating him only for back and left knee pain. Initially, Thrasher limited Hull from doing such things as bending, stooping, and lifting more than ten pounds. At the last appointment of record in November 2005, he told Hull to continue avoiding lifting anything in excess of thirty-five pounds. Hull entered Thrasher’s medical records into evidence. Therein, Thrasher wrote that he attributed Hull’s limitations to his back and left knee pain for which he prescribed anti-inflammatory and pain medications.

¶6 Thrasher’s dated records contain no notation that Hull mentioned problems in his right knee until June 29, 2005, or problems with his neck and arm until July 29, 2005. However, Thrasher did generate an undated report that appeared in Hull’s patient file

between reports dated March 25 and April 2, 2005. That undated report memorialized that Hull had complained of neck and arm pain. Hull requested a subpoena to compel Thrasher to testify, but the ALJ denied it.

¶7 Dr. Brian Nielsen testified he treated Hull for knee problems from May 6, 2005, to December 16, 2005, with physical therapy, a brace, and medications. He concluded that Hull had a preexisting arthritic condition in his left knee that was exacerbated by the accident, but did not place any limitations on his activities. Nielsen did not examine Hull's right knee, but x-ray results demonstrated the existence of arthritis in that knee also. On September 15, Hull complained of right arm pain and numbness. In October, Nielsen referred him to Dr. Gerard Jeong for what he suspected was nerve root compression in the neck.

¶8 Jeong testified that he began treating Hull on October 17, 2005. Hull told him that he had not experienced neck pain or arm symptoms until roughly five months before. Based on a nerve conduction study and magnetic resonance imaging (MRI) scans of the cervical and lumbar spine, Jeong diagnosed Hull with a herniated disk at two levels in the cervical spine causing nerve root and spinal cord compression. Largely relying on the history that Hull provided him of his symptoms, Jeong concluded that Hull's back, neck, and arm conditions were chronic, but exacerbated by the work injury, and limited Hull to office work. Jeong recommended surgery for the spinal cord compression, and Hull's symptoms in his neck and arm diminished greatly following the surgery.

¶9 Dr. Roger Grimes examined Hull and reviewed his medical records. In his testimony, Grimes noted a delay between Hull's fall and complaints about his neck and arm, basing his observation in part on the fact that complaints about those injuries did not appear in Thrasher's notes until July 29. Also in Hull's medical records was a report by a Dr. Prust, noting on August 8 that Hull had been feeling pain in his right arm for about a month. Based on the approximately four months between Hull's fall and the first medical record of his neck and arm complaints, Grimes concluded the work-related fall and the complaints did not relate to each other. However, Grimes agreed he would change his opinion if the undated note by Thrasher was indeed written between March 25 and April 2.

¶10 Grimes also concluded the injury did not relate to Hull's complaints about his right knee, based on Hull's preexisting degenerative arthritis and because Hull did not complain of pain in that knee until June 29, 2005, according to Thrasher's medical records.

¶11 The ALJ found the medical witnesses agreed that Hull's low back and left knee conditions were related to the injury. She concluded Hull was on a temporary partial disability status because of his back and left knee through May 6, 2006. Regarding Hull's right knee, she found no substantial evidence in the record to relate Hull's problems to the injury.

¶12 The ALJ found conflicting evidence had been presented regarding whether Hull's neck and arm condition were related to the fall. Based on the lack of any evidence in the medical records that Hull had reported neck and arm ailments during several visits to

doctors in the four months after the fall, she discredited the Hulls' testimony that Hull had complained about those injuries to Thrasher shortly after the fall and adopted Grimes's conclusion that the condition was not related to the injury. Nonetheless, because Hull's treating doctors felt his neck should be evaluated, she ordered the insurer to pay costs associated with evaluating the neck and arm condition, including the MRI on September 28, 2005. She awarded temporary compensation based on Hull's restrictions related to his back and left knee conditions.

¶13 Hull filed a request for administrative review, arguing, *inter alia*, that the ALJ erred because she ignored Thrasher's undated report. Hull contended the report proved he had made earlier complaints about his neck and arm and thus eliminated any genuine conflict in the opinions of Jeong and Grimes. Hull also contended the ALJ erred when she (1) declined his request to subpoena Thrasher to shed light on the timing of the undated report and (2) failed to consider the Hulls' testimony that Hull had complained about his neck and arm to Thrasher immediately after the fall.

¶14 In her decision upon review, the ALJ affirmed the award, finding her earlier decision was "fully supported by the law and evidence of record" and she had considered the report, but stating that the "mere order of [the] documents" was "not persuasive of the chronology applicant's counsel suggests." Hull raises the same arguments in this petition for statutory special action.

¶15 We first address Hull’s contention that the ALJ abused her discretion by not granting his request to subpoena Thrasher. Hull emphasizes that he made that request timely and “renewed the request on several occasions.” An ALJ exercises discretion in determining the witnesses at a hearing, and we will not disturb an award “for mere procedural errors.” *Travelers Ins. Co. v. Indus. Comm’n*, 18 Ariz. App. 28, 30, 499 P.2d 759, 761 (1972). However, the ALJ must exercise that discretion in conformity with the rules of the Commission. *See id.*; *see also* Ariz. Admin. Code R-20-5-141(A)(4). Under those rules, an ALJ must issue a timely requested subpoena “if the judge determines that the testimony of the witness is material and necessary.” To facilitate making that determination, the ALJ also has discretion to order the party requesting a subpoena to file a statement summarizing the expected testimony of the witness. Ariz. Admin. Code R20-5-141(A)(3) and (4).

¶16 Here, the ALJ denied Hull’s request, finding the doctor’s testimony would most likely duplicate his notes already in the record, but invited Hull to “find out ahead of time as to whether [Thrasher] would shed any light on” when Hull initially complained about problems with his right arm. Although Hull maintains he requested the subpoena on “several occasions,” we can find no evidence in the record that Hull ever provided the further information requested by the ALJ. Because Thrasher’s medical notes had already been entered into evidence and because Hull failed to demonstrate that Thrasher possessed further useful information beyond the contents of those reports, the ALJ did not abuse her discretion in concluding that Thrasher’s testimony would not be “material and necessary.”

Ariz. Admin. Code R-20-5-141(A)(4); *see Reinprecht v. Indus. Comm’n*, 27 Ariz. App. 7, 10, 550 P.2d 654, 657 (1976) (ALJ may refuse to issue subpoena under industrial commission rules when requested statement of testimony not forthcoming or if solicited testimony redundant to medical report).

¶17 Hull next argues the ALJ disregarded evidence, without making specific findings addressing those determinations, and therefore denied him a fair hearing. As the trier of fact, the ALJ resolves all conflicts in evidence and draws inferences therefrom; we will not disturb an ALJ’s conclusions unless they are “wholly unreasonable.” *Muchmore v. Indus. Comm’n*, 81 Ariz. 345, 351-52, 306 P.2d 272, 276 (1957). The ALJ “is the sole judge of witness credibility” and may disregard self-interested testimony “if it is self-contradictory, inconsistent with other evidence, or directly impeached.” *Holding v. Indus. Comm’n*, 139 Ariz. 548, 551, 679 P.2d 571, 574 (App. 1984). We presume an ALJ considers all relevant evidence, *Lopez v. Industrial Commission*, 162 Ariz. 578, 579, 785 P.2d 98, 99 (App. 1989), but require findings on all the case’s material issues, *Post v. Industrial Commission*, 160 Ariz. 4, 7, 770 P.2d 308, 311 (1988). “[I]t is not essential that specific findings of fact be made on every issue involved in a hearing.” *Sproul v. Indus. Comm’n*, 91 Ariz. 128, 134, 370 P.2d 279, 283 (1962). In light of these standards, we conclude the ALJ did not abuse her discretion.

¶18 Hull complains the ALJ “gave very little weight to” Thrasher’s undated report and did not make a specific finding in her award regarding that document. But Hull gave the

ALJ very little information from which to draw any specific conclusions about the undated report. He never proved its date and, as discussed, failed to proffer any information suggesting Thrasher himself could provide further clarity on its date.

¶19 Moreover, the ALJ’s findings squarely addressed the issue that rendered the undated report arguably relevant—whether Hull ever complained of injuries to his neck or arm in the weeks immediately following the fall. In those findings, the ALJ summarized the testimony by the Hulls that the neck and arm problems manifested themselves the day after the injury and that Hull reported those problems to Thrasher the day after the accident. Further, the ALJ articulated a substantial basis for rejecting that testimony, observing that the Hulls’ claims were not corroborated by the medical records or any of the doctors’ testimony.

¶20 Hull also complains the ALJ disregarded his and his wife’s testimony that, immediately following the injury, he started experiencing the neck and arm problems. But the ALJ specifically found, “in light of the substantial evidence in medical records to the contrary,” she could not “credit [Hull]’s or his wife’s testimony.” Thus, far from disregarding the Hulls’ testimony, she considered and rejected it. Her findings addressed all the Hulls’ relevant contentions regarding the neck and arm injuries and provide a factual basis for her conclusions. We therefore will not disturb the award based on the contention her findings were inadequate. *See Post*, 160 Ariz. at 7, 770 P.2d at 311.

¶21 Lastly, Hull contends the award is not reasonably supported by the law and evidence because no valid conflict in the medical testimony existed regarding whether his neck, arm, and right knee conditions were related to his injury. An ALJ resolves conflicts in medical evidence. *Ortega v. Indus. Comm’n*, 121 Ariz. 554, 557, 592 P.2d 388, 391 (App. 1979). We will sustain an ALJ’s findings as long as they are reasonably supported by the evidence. *Russell v. Indus. Comm’n*, 98 Ariz. 138, 142, 402 P.2d 561, 564 (1965).

¶22 We agree with Hull that no conflict in the medical testimony existed as to whether Hull’s right knee problems were related to the injury, but the lack of conflict only supports the ALJ’s award. No medical testimony or evidence related Hull’s right knee problems to his injury. Nielsen testified he did not examine Hull’s right knee. Although the x-rays Nielsen examined showed preexisting arthritis in that knee, nothing about Nielsen’s report suggests that arthritis arose from, or was exacerbated by, Hull’s fall. To the contrary, Thrasher’s notes show Hull did not complain about pain in the right knee until the end of June, three months after his injury. Based on these facts, Grimes concluded that Hull’s right knee condition did not relate to the injury. No doctor disagreed; thus, it was reasonable for the ALJ to reach the same conclusion. *See Revles v. Indus. Comm’n*, 88 Ariz. 67, 74, 352 P.2d 759, 764 (1960) (“[W]hen medical opinions, based on matters peculiarly within the realm of scientific knowledge, are uncontroverted, such opinions cannot be arbitrarily rejected by the Commission.”).

¶23 Nor was the ALJ compelled by the medical testimony to conclude that Hull's neck and arm condition arose from the work-related injury. Although Jeong did conclude, based on the history Hull provided, that the neck and arm condition related to Hull's injury, Grimes specifically came to a different conclusion based on Hull's apparent failure to mention that condition to several doctors in the four months following the fall. Hull suggests that Grimes's opinion was not actually in conflict with Jeong's because Grimes conceded he would agree with Jeong—if Thrasher's undated report were indeed generated during the last week of March 2005. But Hull overlooks that he never proved the undated report was written during that time. Based on the evidence actually presented, the ALJ was entitled to resolve the genuine conflict in the medical testimony created by Jeong and Grimes. *See Ortega*, 121 Ariz. at 557, 592 P.2d at 391. As discussed above, the ALJ's conclusion crediting Grimes's opinion over Jeong's finds reasonable support in the evidence.

¶24 For the foregoing reasons, we affirm the award.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

PHILIP G. ESPINOSA, Judge